

Key Takeaways: Remote Electronic Notarization

Strong remote electronic notarization standards can improve the real estate process for consumers, businesses, and the public

Occasionally, real estate closings involve parties that are not physically in the same city or state as the property they are buying or selling. When this occurs, a complex choreography takes place to get the important documents signed and the transaction complete. Remote electronic notarization has the potential to make this process smoother, cheaper, and more secure.

Why notarize documents in the first place?

Notarization helps provide confidence that transaction documents are actually signed by the persons named in the documents. It is performed by government-authorized persons called Notaries Public who confirm the identity of the signatory (usually established by government issued ID) before placing their signature and seal on the document.

Why is notarization important for real estate transactions?

In the United States, real estate transfer documents are typically recorded in local land records at the end of a transaction. These public records provide the world with constructive notice about American property rights. The ability to rely on the validity of these records is central to our real estate market and provides a fundamental foundation for all parties when mortgaging, purchasing, and selling real property.

What needs to happen to make remote electronic notarization successful?

- First, policymakers need to pass statutes authorizing the practice in their state.
- Second, regulations and business practices need to be implemented to protect consumers from identity theft, forgery, undue influence, and fraud when using remote electronic notarization.
- Third, states should adopt processes that encourage electronic recording of real estate documents to provide local governments with major savings and efficiency.

How do we reduce the risk of fraud with remote electronic notarization?

- The key to reducing fraud is a multi-factor method of authenticating the identity of the signer. This process should include two of the following: (1) items the signer possesses, like a drivers license; (2) information the signer knows based on personal knowledge such as, "What was the make and model of your first car?"; and (3) characteristics unique to the signer, like a finger print.
- Notaries using remote electronic notarization should maintain secure and tamper-evident records of the documents they authenticate and the method of identity verification used.

What about remote electronic notarizations done under a different state's laws?

Policymakers must determine whether to specifically recognize documents that were remotely notarized by out-of-state notaries. The U.S. Constitution's "full faith and credit clause" sets requirements for recognizing the actions of another state; however, it does not require a state to set aside its own state statute in favor of another state's statute when it expresses a conflicting policy. By enacting clear legislation that addresses recognition of out-of-state remote notarizations, states can provide confidence that such a notarization process will meet the state's requirements for notarial acts.

The Goal: Ensure that electronic documents signed through remote electronic notarization are as valid, secure, and provide the same constructive notice as paper documents signed in-person.